IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Bail Appl..No. 4852 of 2007()

(IN CRIME NO.540/2005 OF CHATHANNOOR POLICE STATION)

PETITIONER/2ND ACCUSED:

K.M.JABBAR,
KARINPAYIL HOUSE, MANAKKAPADY, ASOKAPURAM P.O.,
ALUVA.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU

RESPONDENT: STATE:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

= = = = = = = = = = = = = =

B.A.No.4852 of 2007

= = = = = = = = = = = = = =

Dated this the 10th day of August, 2007

ORDER

Application for anticipatory bail. Petitioner is the first accused. The crux of the allegations is that, the victim, a girl below the age of consent, was raped by the 1st accused. The only allegation against the petitioner is that he offered a premises to the 1st accused and the girl at which premises the first accused and the girl had sexual relationship. Investigation is complete. Cognizance has already been taken by the learned Magistrate. Committal proceedings has been registered as C.P.No.72/2006. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner had not knowingly abetted or facilitated the commission of any crime. The petitioner had no reason to assume the sexual intercourse between A1 and the girl would amount to any offence under law. The learned counsel for the petitioner also relies on the statement given by the girl, when she was produced before the learned Magistrate, that she has not been subjected to any offence by any one.

3. The learned counsel for the petitioner in these circumstances submits that the directions under Section 438 may be issued to save the petitioner from the undeserved trauma of arrest and detention. The learned Public Prosecutor does not oppose the prayer. He points out in reference to a query by the Court, that the only allegation against the petitioner is that the petitioner has given accommodation to the 1st accused and the girl. There is no allegation whatsoever of any active involvement of the petitioner in the alleged offence committed by the first accused.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked even in a case where a person who apprehends arrest in execution of processes issued by a Criminal court after cognizance has been taken.

5. In the result, this petition is allowed. The following directions were issued under Section 438 Cr.P.C.

i) Petitioner shall appear before the learned Magistrate having jurisdiction on 17.8.07.

ii) He shall be released on regular bail on condition that he execute a bond for Rs.25,000/-(Rupees twenty five thousand only)

with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioner shall make himself available for interrogation before the investigating officer as and when directed by the investigating officer in writing to do so.

(iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(v) If he were arrested prior to 17.8.2007, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 17/8/2007.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE